

**REMARKS**

Claims 1-37 are pending in this application with claims 2, 15, 29, 32 and 25 being cancelled by this response. Claims 1, 3- 11, 13, 16 – 19, 23, 26, 30, 31, 33, 34, 36 and 37 have been formally amended to further clarify the present invention. Applicant respectfully submits that no new matter has been added by these amendments. Support for these amendments can be found throughout the specification and the original claims.

**Objection to the Oath/Declaration**

The Oath/Declaration is considered defective due to the alteration of the residence on page 7. Attached hereto is a newly executed Declaration by Uwe Eisermann with the correct and unaltered residence address. Therefore, it is respectfully submitted that the attached Declaration complies with 37 CFR 1.67(a) and should be accepted.

**Rejection of Claims 1, 6, 7, 9, 13, 19, 20, 22, 28, 36 and 37 under 35 USC 102(b)**

Claims 1, 6, 7, 9, 13, 19, 20, 22, 28, 36 and 37 are rejected under 35 USC 102(b) as being anticipated by Goknar (U.S. Pat. No. 6,120,440).

The present claimed invention describes a method and system for providing support when selecting a training program as part of therapy planning. A capability profile for a patient is provided. A first database is provided containing a plurality of past comparative capability profiles for comparative patients and an allocation of training programs respectively prescribed based on the comparative capability profiles. The patient's capability profile is automatically compared with the comparative capability profiles. At least one training program associated with the past comparative capability profile that matches the patient's capability profile to a prescribable degree of similarity is selected and displayed. The training program in the first database additionally includes associated measured values for the success of treatment in the respective comparative patient. Data representative of at least one training program is displayed together with the associated measured value for the success of treatment. Claims 1, 13, 26, 36 and 37

include features similar to those described above. Applicant respectfully submits that Goknar neither discloses nor suggests these features.

Contrary to the present claimed invention, Goknar describes “a computer program enabling a mental health clinician, of less skill than an M.D., D.O., or Ph.D., to perform psychometric evaluations, obtain meaningful symptomatic analysis, and recommend courses of treatment from the evaluation (Goknar, column 1, lines 17-22). Goknar provides no 35 USC 112 enabling disclosure that anticipates each of the features claimed in the present invention.

Specifically, Goknar neither discloses nor suggests “providing a capability profile for a patient,” as recited in the present claimed invention. Column 3, lines 9-15 of Goknar describe scoring a list of evaluative indicators, wherein the indicators are grouped into the diagnostic categories Function, Cognition, Emotion, Behavior, Personality and Risk Factors. This is wholly unlike the present claimed invention where the capability areas evaluated are “motor capabilities such as strength, stamina, mobility, balance, reaction, orientation, differentiation, accommodation, speech motor functions; intellectual/cognitive capabilities such as attention, memory, planning, comprehension of speech, communication vision; organic/physical capabilities such as reduction of organ performance; social capabilities such as the ability to communicate and participate; emotional capabilities such as the capability to develop self-esteem” (Specification, page 1, line 24-page 2, line 2). The factors being evaluated by the system of Goknar and the present claimed invention are not equivalent. Goknar is concerned with a patient’s psychological state. The present claimed invention, on the other hand, is concerned with rehabilitation after serious illness (Specification, page 1, lines 5-15). Additionally, the scale Goknar uses to evaluate the patient is the Diagnostic and Statistical Manual scale which is the reference starting point in the art (Goknar, column 3, lines 24-26). The present claimed invention, on the other hand, “automatically” compares “the patient’s capability profile with” “a plurality of past comparative capability profiles for comparative patients.” Goknar and the present claimed invention evaluate different factors, using different evaluation scales in an entirely different manner. Thus, Goknar

provides no 35 USC 112 enabling disclosure that anticipates the present claimed invention.

Additionally, as admitted on page 7 of the rejection Goknar neither discloses nor suggests that “at least one training program includes associated measured values for the success of treatment in the respective comparative patient” and “displaying representative of the at least one training program together with the associated measured value for the success of treatment” as recited in the present claimed invention. Therefore, in view of this admission, Applicant respectfully submits that Goknar does not disclose each feature as claimed in claim 1 and does not anticipate the present claimed invention.

Independent claims 1, 13, 26, 36 and 37 include similar patentable features as discussed above. Applicant respectfully submits that the arguments presented above are applicable to claims 1, 13, 26, 36, and 37, and that the invention of claims 1, 13, 26, 36, and 37 is also not anticipated by Goknar. Therefore, Goknar neither discloses nor suggests each claimed feature of the present invention as claimed in claims 1, 13, 26, 36 and 37 as required by 35 USC 102(b). Thus, Applicant respectfully submits that Goknar does not anticipate the present claimed invention. Consequently, it is respectfully requested that the rejection of claims 1, 13, 26, 36 and 37 be withdrawn.

Concerning the rejection of claims 6 and 19, the applicant also respectfully disagrees with the contention in the office action that the claimed feature is anticipated by Goknar. Specifically, Goknar provides no 35 USC 112 compliant enabling disclosure that anticipates the use of “prescribable selection rules” “to propose a suitable training program which promises an optimum training result for the patient” “based on the match between the comparative capability profiles and the patient’s capability profile and the measured values for the success of treatment on the respectively prescribed training programs” as recited in the present claimed invention. Rather, column 3, lines 63 to column 4, line 5 of Goknar provides after the evaluation is complete that the operator performs the following functions, “total the data to produce an overall score; figure mean scores for each diagnostic category; display the results in graphic form, in line graph or

bar graph form, or both; correlate individual indicators into psychiatric symptom subsets, and calculate the data therein and prioritize the symptoms in priority of morbidity and psychological asset strengths of the patient.” The operator merely manipulates the data to prioritize the symptomatic problem areas and assets of the patient. Not one of these functions describes “the **data processing station** uses prescribable selection rules to propose a suitable training program which promises an optimum training result for the patient” using the “**measured values for the success of treatment**,” as recited in the present claimed invention. Consequently, it is respectfully requested that the rejection of claims 6 and 19 be withdrawn.

Concerning the rejection of claims 7 and 20, the applicant also respectfully disagrees with the contention in the office action that the claimed feature is anticipated by Goknar. Specifically, Goknar provides no 35 USC 112 compliant enabling disclosure that anticipates, “at least one of proposed and displayed training programs are modifiable by a user,” as recited in the present claimed invention. In column 9, lines 30-40, Goknar describes changing the patient data “to simulate a deterioration in the condition of the patient...or to simulate functional improvement...to see what may happen to the patient regarding possible new disorders or curing of old disorders, as a patient improves or deteriorates.” This is wholly unlike the present claimed invention. The present claimed invention describes modifying a training program because the most similar comparative case has significant differences from the present case, and thus the training program cannot be directly transferred (Specification, page 7, line 38 – page 8, line 6). Therefore, the “training program [is] modifiable by a user” to better match the current case. A simulation is not equivalent to modifying a training program which adapts the present situation in view of the comparative case. Consequently, it is respectfully requested that the rejection of claims 7 and 20 be withdrawn.

In view of the above remarks and amendments to the claims, it is respectfully submitted that there is no 35 USC 112 enabling disclosure in Goknar that anticipates the present invention as claimed in claims 1, 13, 26, 36 and 37. As claims 6, 7 and 9 are dependent on claim 1, claims 19, 20, and 22 are dependent on claim 13, and claim 28 is

dependent on claim 26, it is respectfully submitted that these claims are also not anticipated by Goknar. It is thus further respectfully submitted that this rejection is satisfied and should be withdrawn.

**Rejection of Claims 2, 14, 15, 29, 32 and 35 under 35 USC 103(a)**

Claims 2, 14, 15, 29, 32 and 35 are rejected under 35 USC 103(a) as being unpatentable over Goknar (U.S. Pat. No. 6,120,440) in view of Joao (U.S. Pat. No. 5,961,332). These claims are considered patentable for the following reasons.

Claims 2, 15, 29, 32 and 35 have been cancelled by this response. The feature of these claims has been added to independent claims 1, 13 and 26, as described above. Applicant respectfully submits that due to the cancellation of claims 2, 15, 29, 32 and 35, the rejection of claims 2, 15, 29, 32 and 35 is moot.

Applicant respectfully submits that the features of original claim 2 were added to claim 1. Specifically, claim 1 includes "at least one training program includes associated measured values for the success of treatment in the respective comparative patient; and displaying data representative of said at least one training program together with the associated measured value for the success of treatment". As acknowledged on page 7 of the Rejection, Goknar neither discloses nor suggests this feature. Furthermore, for the reasons discussed below, Joao with Goknar similarly neither disclose nor suggest this feature.

Joao describes an improvement to an apparatus for processing psychological data. The Joao system includes means for processing data indicative of at least one of an individual's psychological condition, psychological states, concomitant psychological states, and states of dysfunction in conjunction with at least one of psychological states, concomitant psychological states, psycho pathological, at least one of principals, theories, and research data in order to generate data indicative of at least one of a diagnosis and treatment plan for the individual (see Joao, Abstract). Contrary to the assertions in the

rejection, column 7, lines 29-50, column 8, lines 1-17, column 9, lines 10-19 and column 37, lines 33-46 of Joao (alone or in combination with Goknar) also neither disclose nor suggest the claimed feature. These cited sections of Joao merely describe changes in a patient's condition leading to changes in treatment and the monitored progress, process and outcome of the treatment based on the severity score. Nowhere in these passages or elsewhere in Joao, is there any 35 USC 112 enabling disclosure of a "measured value for the success of treatment in the **respective comparative patient**" associated with the "training program" and a display of data representing the "training program together with the associated measured value for the success of treatment," as recited in the present claimed invention. Similarly to Goknar, Joao is not concerned with comparing "a patients capability profile" with "past comparative capability profiles for comparative patients" for selecting a "training program". Joao is merely concerned with using "psychological principles, theories, research data and/or other pertinent information stored in the apparatus" to evaluate a current patients **psychological state** (see Joao, col. 8, lines 10 – 15). This is NOT equivalent to the operation of the claimed arrangement as discussed herein.

Applicant further respectfully submits that while both Goknar and Joao are concerned with diagnosis and treatment of a patient's **psychological** condition, neither Goknar nor Joao are concerned with or recognize the problem addressed by the present claimed invention. The present claimed invention is concerned with the **rehabilitation** of a patient after suffering a serious illness. The present claimed invention seeks to simplify the work for the physician or therapist in selecting a training program in therapy planning, making the decision independent of the physician/therapists individual previous experience in prescribing training programs (Specification, page 4, lines 6-12).

However, even if there was a reason or motivation to combine these two references, the combination of the system/method of Goknar with the system/method of Joao as suggested in the Rejection would not result in the present claimed invention. Rather, this combination would result in a system/method for diagnosing and treating a patient having psychological problems. This combination clearly would not

“automatically” compare “a patient capability profile” with “a plurality of past comparative capability profiles” and allocate “training programs” based on these past profiles. Goknar with Joao also neither disclose nor suggest a “measured value for the success of treatment in the respective comparative patient” associated with the “training program” and then a display of data representative of the “training program together with the associated measured value for the success of treatment,” as recited in the present claimed invention.

With respect to claim 14, Applicant further respectfully submits that contrary to the rejection, Goknar (with Joao) neither discloses nor suggests “the data processing station is coupled to a second database, from which the patient’s capability profile is retrievable,” as recited in claim 14 of the present invention. Rather, column 3, lines 56-67 of Joao merely describes using a CPU as a backup system “which serve as a redundancy system in the event of a failure or malfunction of the respective primary system counterparts.” The cited section is referring to a “processor” as backup system and NOT a “second database” coupled to the “data processing station” and “from which the patient’s capability profile is retrievable,” as recited in the present claimed invention.

In view of the above remarks, it is respectfully submitted that there is no 35 USC 112 enabling disclosure in either Goknar or Joao, when taken alone or in combination, that makes the present invention as claimed in claim 14 unpatentable.

**Rejection of Claims 3, 4, 5, 8, 10, 16-18, 21, 23, 27, 30, 31, 33 and 34 under 35 USC 103(a)**

Claims 3, 4, 5, 8, 10, 16-18, 21, 23, 27, 30, 31, 33 and 34 are rejected under 35 USC 103(a) as being unpatentable over Goknar (U.S. Pat. No. 6,120,440) in view of Luciano (U.S. Pat. No. 6,063,028). These claims are considered patentable for the reasons given in connection with claims 1, 13, 26, 36 and 37 given above, and for the following reasons.

Luciano describes “a modeling system for generating the expected recovery pattern of a patient receiving a particular treatment which is useful for comparison with the actual recovery pattern of the patient to provide for monitoring of the patient’s response...When the patient’s response does not correspond to the predicted recovery pattern, the treatment regime can be re-evaluated” (Column 4, lines 30-39).

Luciano (with Goknar) neither discloses nor suggests “a plurality of training programs are displayed in an order of size of the associated measured values for the success of treatment,” as recited in claims 3, 16, 30 and 33 of the present claimed invention. Rather, column 7, lines 4-7 of Luciano merely describes the patient data is “entered into the Outcome Predictor which provides a database of predicted outcomes in response to multiple treatments by comparing the patient’s data to predicted outcomes based upon the information in the trained Outcome Predictor.” This passage and elsewhere in Luciano (with Goknar), fails to provide any 35 USC 112 enabling disclosure describing the association of a measured value for the success of treatment and then displaying the training programs “in an order of size of the associate measured values for the success of treatment,” as recited in the present claimed invention.

Concerning the rejection of claims 4, 17, 27, 31 and 34, the applicant also respectfully disagrees with the contention in the rejection that the claimed feature is disclosed or suggested by Luciano (with Goknar). Rather, Luciano (with Goknar) neither discloses nor suggest “a plurality of training programs are displayed in an order of degree of similarity of the match between the associated comparative capability profiles and the patient’s capability profile,” as recited in the present claimed invention. Contrary to the assertion in the rejection, Column 7, lines 1-13, merely indicates a physician monitors a patient’s response to treatment by comparing that response to a predicted response. When the patient’s response differs from the expected response, the physician may alter the treatment. This passage and elsewhere in Luciano (with Goknar), fails to provide any 35 USC 112 enabling disclosure describing displaying data representative of a plurality of training programs “in an order of degree of similarity of the match between the



associated comparative capability profiles and the patient's capability profile," as recited in the present claimed invention.

Concerning the rejection of claims 5 and 18, the applicant also respectfully disagrees with the contention in the rejection that the claimed feature is disclosed or suggested by Luciano (with Goknar). Rather, Luciano (with Goknar) neither discloses nor suggest, "only the at least one training program, having at least one of the highest measured value for the success of treatment and a measured value for the success of treatment which is **above a prescribable threshold value**, is displayed," as recited in the present claimed invention. Goknar, in column 4, lines 8-13, merely describes the "data is compared and matched to various treatment options to select the treatment option or options most nearly fitting the psychological profile of the patient." This passage, and elsewhere in Goknar, does not provide "measured values for the success of treatment" at all, and therefore, does not provide "only the at least one training program, having at least one of the highest measured value for the success of treatment and a measured value for the success of treatment which is **above a prescribable threshold value**, is displayed," as recited in the present claimed invention. Further, Luciano in Figure 3-12 merely describes predicted symptom results in response to two treatments. This passage, and elsewhere in Luciano also does not provide "measured values for the success of treatment" at all, and therefore, does not provide that "only the at least one training program, having at least one of the highest measured value for the success of treatment and a measured value for the success of treatment which is **above a prescribable threshold value**, is displayed," as recited in the present claimed invention.

Concerning the rejection of claims 8 and 21, the applicant also respectfully disagrees with the contention in the rejection that the claimed feature is disclosed or suggested by Luciano (with Goknar). Rather, Luciano (with Goknar) neither discloses nor suggest, "the selection of the at least one training program automatically involves a match between further patient data for the patient and patient data for the comparative patients, which are additionally contained in the first database, being checked and taken into account," as recited in the present claimed invention. As described above, Figure 3-

12 of Luciano merely describes the predicted results of seven symptoms in response to two treatments. This passage and elsewhere in Luciano (with Goknar), fails to provide any 35 USC 112 enabling disclosure indicates "the selection of the at least one training program automatically involves a match between further patient data for the patient and patient data for the comparative patients, which are additionally contained in the first database, being checked and taken into account," as recited in the present claimed invention.

While both Goknar and Luciano are concerned with diagnosis and treatment of a patient's psychological condition, neither Goknar nor Luciano are concerned with or recognize the problem addressed by the present claimed invention. The present claimed invention is concerned with the rehabilitation of a patient after suffering a serious illness. The present claimed invention seeks to simplify the work for the physician or therapist in selecting a training program in therapy planning, making the decision independent of the physician/therapists individual previous experience in prescribing training programs (Specification, page 4, lines 6-12).

However, even if there was a reason or motivation to combine these two references, the combination of the system/method of Goknar with the system/method of Luciano as suggested in the Rejection would not result in the present claimed invention. This combination would result in a system/method for diagnosing, treating and predicting the outcome of a patient having psychological problems. This combination clearly would not produce, "said at least one training program includes associated measured values for the success of treatment in the respective comparative patient; and displaying the at least one training program together with the associated measured value for the success of treatment," as recited in the present claimed invention.

In view of the above remarks, it is respectfully submitted that there is no 35 USC 112 enabling disclosure in either Goknar or Luciano, when taken alone or in combination, that makes the present invention as claimed in claims 1, 13, 26, 36 and 37 unpatentable. Additionally, as claims 3, 4, 5, 8, 10 and 31 are dependent on claim 1,

claims 16-18, 21 and 23 are dependent on claim 13, claims 27, 30, 33 and 34 are dependent on claim 26, it is respectfully submitted that claims 3, 4, 5, 8, 10, 16-18, 21, 23, 27, 30, 31, 33 and 34 are patentable for the reasons discussed above with respect to claims 1, 13, 26, 36 and 37. Consequently, withdrawal of the Rejection of Claims 3, 4, 5, 8, 10, 16-18, 21, 23, 27, 30, 31, 33 and 34 under 35 USC 103(a) is respectfully requested.

**Rejection of Claims 11 and 24 under 35 USC 103(a)**

Claims 11 and 24 are rejected under 35 USC 103(a) as being unpatentable over Goknar (U.S. Pat. No. 6,120,440) in view of Luciano (U.S. Pat. No. 6,063, 028) and further in view of Joao (U.S. Pat. No.5,961,332). These claims are considered patentable for the reasons given in connection with claims 1, 13, 26, 36 and 37 given above, and for the following reasons.

Applicant further respectfully submits that contrary to the rejection, Joao (with Goknar and Luciano) neither discloses nor suggests "a third database is provided which contains transfer measures between different training programs, and in the event of the prescribed training program being replaced with a further training program, the data processing station automatically retrieves and outputs transfer measures for this further training program by reverting to the third database," as recited in the present claimed invention. Rather, column 3, lines 5-60 of Joao merely describes using a CPU for processing the data and for "performing various calculations and/or data processing routines" on data input during psychological evaluation, as well as a ROM for storage of software programs, and a RAM for storage of the psychological data. The cited section is referring to a "processor," and memories and NOT a "third database" having "transfer measures between different training programs, and in the event of the prescribed training program being replaced with a further training program, the data processing station automatically retrieves and outputs transfer measures for this further training program by reverting to the third database, as recited in the present claimed invention. The calculation by a processor in Joao is superficial and cannot be reasonably interpreted to describe the present claimed feature.

While Goknar, Luciano and Joao are concerned with diagnosis and treatment of a patient's psychological condition, Goknar, Luciano and Joao, alone or in any combination are not concerned with or recognize the problem addressed by the present claimed invention. The present claimed invention is concerned with the rehabilitation of a patient after suffering a serious illness. The present claimed invention seeks to simplify the work for the physician or therapist in selecting a training program in therapy planning, making the decision independent of the physician/therapists individual previous experience in prescribing training programs (Specification, page 4, lines 6-12).

However, even if there was a reason or motivation to combine these three references, the combination of the system/method of Goknar with the system/method of Luciano with the system/method of Joao as suggested in the Rejection would not result in the present claimed invention. This combination would result in a system/method for diagnosing, treating and predicting the outcome of a patient having psychological problems. This combination clearly fails to show or suggest, a third database is provided which contains transfer measures between different training programs, and in the event of the prescribed training program being replaced with a further training program, the data processing station automatically retrieves and outputs transfer measures for this further training program by reverting to the third database," as recited in the present claimed invention.

In view of the above remarks, it is respectfully submitted that there is no 35 USC 112 enabling disclosure in either Goknar, Luciano, or Joao when taken alone or in any combination, that makes the present invention as claimed in claims 1, 13, 26, 36 and 37 unpatentable. Additionally, as claims 11 and 24 are dependent on claims 1 and 13, respectively, it is respectfully submitted that claims 11 and 24 are patentable for the reasons discussed above with respect to claims 1, 13, 26, 36 and 37. Consequently, withdrawal of the Rejection of Claims 11 and 24 under 35 USC 103(a) is respectfully requested.

**Rejection of claims 12 and 25 under 35 USC 103(a)**

Claims 12 and 25 are rejected under 35 USC 103(a) as being unpatentable over Goknar (U.S. Pat. No. 6,120,440) in view of McCallum (U.S. Pat. No. 5,784,635). These claims are considered patentable for the reasons given in connection with claims 1, 13, 26, 36 and 37 given above, and for the following reasons.

McCallum describes "a system and method for assimilating diversely-formatted physician practice data into a universal single-format database to support critical information systems within said practice and among Independent Practice Associations of which said practice may be a member" (Column 1, lines 5-12).

McCallum (with Goknar) neither discloses nor suggests "said at least one training program includes associated measured values for the success of treatment in the respective comparative patient; and displaying the at least one training program together with the associated measured value for the success of treatment," as recited in the present claimed invention.

It is also respectfully submitted that there is no reason or motivation to combine Goknar and McCallum. Goknar is concerned with diagnosis and treatment of a patient's psychological condition. McCallum is concerned with assimilating a physician's existing practice data into a single-format database that may be used by physician groups to support critical information systems. Goknar and McCallum relate to completely different aspects of patient care and thus it is respectfully submitted that the combination of these references to produce the present claimed invention would not be obvious as there is no common problem recognition present in both Goknar and McCallum.

As described above, Goknar and McCallum, alone or in combination are not concerned with or recognize the problem addressed by the present claimed invention. The present claimed invention is concerned with the rehabilitation of a patient after

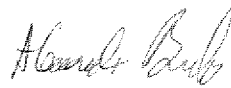
suffering a serious illness. The present claimed invention seeks to simplify the work for the physician or therapist in selecting a training program in therapy planning, making the decision independent of the physician/therapists individual previous experience in prescribing training programs (Specification, page 4, lines 6-12).

However, even if there was a reason or motivation to combine these two references, the combination of the system/method of Goknar with the system of McCallum as suggested in the Rejection would not result in the present claimed invention. This combination would result in a system that assimilates the diagnoses of psychological patients into a single-format database that may be used by physician groups to support critical information systems. This combination clearly fails to show or suggest, "said at least one training program includes associated measured values for the success of treatment in the respective comparative patient; and displaying the at least one training program together with the associated measured value for the success of treatment," as recited in the present claimed invention. Consequently, withdrawal of the rejection of claims 12 and 25 under 35 USC 103(a) is respectfully requested.

Having fully addressed the Examiner's rejections, it is believed that, in view of the preceding amendments and remarks, this application stands in condition for allowance. Accordingly then, reconsideration and allowance are respectfully solicited. If, however, the Examiner is of the opinion that such action cannot be taken, the Examiner is invited to contact the applicant's attorney at the phone number below, so that a mutually convenient date and time for a telephonic interview may be scheduled.

In view of the above amendments and remarks, Applicants submit that the Application is in condition for allowance, and favorable reconsideration is requested.

Respectfully submitted,



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